

SOUTH AFRICA / JUDGMENT

Okeke v S (A167/2018) [2018] ZAGPPHC 325 (10 May 2018) [2018] ZAGPPHC 325

COURT

North Gauteng High Court, Pretoria

BEFORE

C.J Collis

CASE / FILE NUMBER

A167/2018

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REPUBLIC OF
SOUTH AFRICA
IN THE HIGH
COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)

(1)

REPORTABLE

(2)

OF INTEREST TO OTHER JUDGES

(3)

REVISED.

CASE NO:

A167/2018

10/5/2018

In

the matter between:

MICHEAL

OKEKE

Appellant

and

THE

STATE

Respondent

JUDGMENT**COLLIS J**

[1] This is an appeal against a decision of the Nigel Magistrate's Court refusing to grant the appellant bail.[1] The Learned Magistrate refused bail on the grounds that the likelihood exists the factors as set out in section 60(4) (a),(b) and

(e) of the Criminal Procedure Act 51 of 1977 would occur, if the Appellant was released on bail.

[2] The Notice of Appeal filed of record, is against the refusal by the bail court to grant the appellant bail.[2] Albeit that the finding as made by the magistrate that the bail application resorted within the ambit of schedule 5 of the Criminal

Procedure Act, this ground during the hearing of the bail appeal was no longer persisted with by counsel acting for the Appellant.

Legislative framework

[3] Section 65(4) of the Criminal Procedure Act 51 of 1977, stipulates the requirements for setting aside any bail decision. The section reads as follows:

" The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such Court or judge is satisfied that the decision was wrong in which event the Court or judge shall give the decision which in its or his decision the lower court should have given. "

[4] In S v Barber 1979 (4) SA 218 (D) 220E-H Hefer J remarked as follows:

"It is well known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application. This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because that would be an unfair interference with the magistrate's exercise of his discretion. I think it should be stressed that, no matter what this Court's own views are, the real question is whether it can be said that the magistrate who had the discretion to grant bail but exercised that discretion wrongly... Without saying that the magistrate's view was actually the correct one, I have not been persuaded to decide that it is the wrong one. "

[5] The Appellant was charged with contravening section 5(b) of the Drug and

Drug Trafficking Act 140 of 1992-Dealing in an undesirable dependence producing substance, in addition thereto, he was charged with contravening section 4(b) of the Drugs and Drugs Trafficking Act 140 of 1992-Possession of an undesirable dependence producing substance.

[6] In considering this appeal, I am mindful of the following provisions contained in our Constitution Act 108 of 1996. Firstly, section 35(1)(f) of the Constitution which provides as follows:

"Everyone who is arrested for allegedly committing an offence has the right-

(f) to be released from detention if the interest of justice permit, subject to reasonable conditions."

And secondly section 12 of our Constitution which provides:

"S 12(1) (a) Everyone has the right to freedom and security of the person, which includes the right-

(a)not to be deprived of freedom arbitrarily or without just cause. "

Grounds of Appeal

[7] Mr. Van Der Merwe appearing on behalf of the Appellant articulated the crisp issue in this appeal as to whether the Learned Magistrate was wrong in finding that the interest of justice does not permit the

release of the Appellant on bail. Counsel during argument had submitted that the magistrate ought to have found that the interest

of justice allows the release on bail of the Appellant for the following reasons:

7.1 The search warrant was carried out at an address at which the Appellant has been residing at for the past four (4) years;

7.2 Prior to the search warrant having been obtained by the investigating officer, he had visited this address on previous occasions;

7.3 The Appellant is a father of two minor children which he maintains as well as their mother;

7.4 He is the sole director of the company Mandas Global Servicers, which has its registered address within Benoni;

7.5 The Appellant has previously been charged with five (5) similar offences which were all withdrawn and attended court during all previous cases;

7.6 The Appellant owns substantial movable and immovable assets which is indicative of his roots in the East Rand;

7.7 The Appellant, a foreigner, owns a passport, which travel document can be confiscated in order to ensure that he is not in a position to travel.

Respondent's Opposition

[8] Counsel appearing for the Respondent made the following submissions before the court:

8. 1 Counsel submitted that the decision by the bail court was not wrong and that a court on appeal can only set aside such decision, if the court hearing the appeal is satisfied that the decision was wrong;

8.2 Furthermore, counsel submitted that as the Appellant escaped after being detained from lawful custody, that this fact is indicative of him being a flight risk, more so that he now faces lengthy terms of imprisonment.

[9] In its decision[3] the bail court concluded that it was strange that the Appellant would be renting a room in a house, whereas he owns two immovable properties in the same street. As the Appellant presented his evidence during the bail application by way of affidavits, that several discrepancies and inconsistencies were found in his affidavits which pointed to the fact that the Appellant was not truthful to the court. By way of example, none of the properties which he said he owns is indeed registered in his name, nor was he able to recall the names and ages of his children born South African citizens, which he claims to maintain. The court as a result concluded that he does not seem to have strong family ties in South Africa. The magistrate further found that as there existed no extradition treaty between South Africa and Nigeria and Ghana, that there indeed existed a likelihood that the Appellant would not stand his trial, if he was to be released on bail and either travelled to his country of birth being Nigeria, or to Ghana where he conducts some business from. As for the charge of escaping from lawful custody, the magistrate remarked that the State was in possession of a statement from the owner of the residence in which house the Appellant went to hide when he escaped from lawful custody on the day of his arrest.

[10] Having regard to the cumulatively findings made by the bail court, in my view the magistrate correctly found that the appellant having carried the onus had failed to show that the interest of justice permitted his release on bail. To my mind nothing points to the fact that this decision properly motivated by the magistrate was wrong.

[11] Given the reasons as alluded to above, I am not persuaded that the refusal to grant bail as given by the magistrate was wrong.

[12] In the result the following order is made:

12.1 The bail appeal is refused.

C.J COLLIS

JUDGE OF THE HIGH COURT

Appearances:

For the Appellant : Adv. F. Van Der Merwe

Instructed by

: De Beer Attorneys

For the Responden : Adv. S. Scheepers

Instructed by

: Director of Public Prosecutions

Pretoria

Date of Hearing : 4 May 2018

Date of Judgement : 10 May 2018

[1] See Record page 127 -136

[2] See Record page 226

[3] See Record page 127-136

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